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In re Application of	:	OFFICE OF PETITIONS
Michael Garst	:	
Application No. 09/903,954	:	DECISION ON PETITION
Filed: July 12, 2001	:	
Attorney Docket No. 17095CIPCON	:	

This is a decision on the "Petition under 37 CFR 1.182 to Refund Extension Fees and Petition Fees", filed January 25, 2007. This petition is properly treated as a petition under 37 CFR 1.181.¹

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181.

This application would have been held abandoned for failure to reply to the Notification of Non-Compliant Appeal Brief mailed August 8, 2006, which set an extendable one (1) month shortened statutory period for reply. To make the reply timely a five month extension of time fee was submitted on February 8, 2007.

Petitioner asserts that the Notification of Non-Compliant Appeal Brief dated August 8, 2006 was not received.

A review of the written record indicates no irregularity in the mailing of the Non-Compliant Appeal Brief, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Non-Compliant Appeal Brief was not in fact received. In this regard, the showing required to establish the failure to receive the Non-Compliant Appeal Brief must consist of the following:

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a

¹ This petition will not address petitioner's claims that question the appropriateness of the Notice to of Non-Compliant Appeal Brief. Such arguments should be directed to art unit 1612 pursuant to 37 CFR 1.4(c).

showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner. The statement should also describe the system used for recording an Office action received at the correspondence address of record and establish that the docketing system was sufficiently reliable;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and
3. a copy of the master docket for the firm docket record where the nonreceived Office action would have been entered had it been received must be attached to and referenced in the practitioner's statement. If no master docket exists, the practitioner should so state and provide other evidence such, as but not limited: to the application file jacket, incoming mail log; calendar; reminder system or individual docket record for the application in question.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition fails to satisfy all of the above-stated requirements.

Accordingly, absent the required evidence to establish nonreceipt of the Non-Compliant Appeal Brief of August 8, 2006, the petition requesting refund of the extension of time fees cannot be granted.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

A handwritten signature in black ink, appearing to read "Charlema R. Grant", with a long horizontal flourish extending to the right.

Charlema R. Grant
Petitions Attorney
Office of Petitions